

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, individually and as
Executrix of the Estate of DANTE TAYLOR,
and TEMPLE McDAY,

Plaintiffs,

v.

STEWART ECKERT, Superintendent Wende
Correctional Facility, *et al.*,

Defendants.

**ORDER OF PRELIMINARY
PRETRIAL CONFERENCE**

Case No. 1:20-cv-233-JLS-JJM

This action has been referred to me by Order of Hon. John L. Sinatra, Jr. for entry of a Case Management Order, in accordance with Fed. R. Civ. P. (“Rule”) 16 and Local Rule 16.

Each party, including any party appearing without counsel, shall appear on **October 25, 2021 at 10:00 a.m.** for the purpose of entry of a Case Management Order as required by Rule 16(b). This appearance will be held by AT&T teleconference. To access the teleconference, the parties may dial (888) 808-6929 and enter access code 1533000# sufficiently in advance of the conference. Failure to be present at the scheduled time may be considered a failure to participate.

The parties are expected to follow the attached chambers procedures (also available on the court’s website at www.nywd.uscourts.gov).

All parties should note that the case is subject to mandatory pretrial mediation as required by the court’s Alternative Dispute Resolution Plan (“ADR Plan”). The parties are urged to consult the ADR Plan and a related document, Alternative Dispute Resolution Procedures, copies of which are available from the Clerk of the Court and on the court’s website.

As required by Rule 26(f), the parties shall confer at least 21 days prior to the Rule 16(b) hearing as scheduled above for (1) preparation of the required Proposed Discovery Plan, and (2) to propose to the court a Case Management Order that will establish outside cut-off dates for the further progress of this case (*see* attachment). The proposed Discovery Plan and Case Management Order shall, pursuant to Rule 26(f), be submitted to the court in writing at least 14 days prior to the Rule 16(b) conference. In preparing the proposed Case Management Order, please bear in mind that, absent extraordinary circumstances, dispositive motions are due within 12 months of the Rule 16(b) conference, meaning that all discovery (fact and expert) must be completed prior to that deadline.

All parties should be prepared to address at the conference any anticipated electronic discovery issues that may arise.

The parties are encouraged to consider the attached consent to proceed before a United States Magistrate Judge in a civil case pursuant to 28 U.S.C. §636(c). If the parties wish to consent, they must execute the consent form and return it to the Clerk for processing. However, no substantive adverse consequences will result should the parties elect not to consent.

SO ORDERED.

Dated: September 28, 2021

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NOTICE OF RIGHT TO CONSENT TO DISPOSITION
OF A CIVIL CASE
BY A UNITED STATES MAGISTRATE JUDGE

PLEASE TAKE NOTICE pursuant to Title 28 U.S.C. 636(c) that, if all parties to this civil action (or their attorneys) consent, a full-time United States Magistrate Judge of this Court may conduct any or all proceedings therein, including the conducting of a jury or non-jury trial and order entry of a final judgment. A copy of the appropriate consent form is attached.

Your decision to consent or not to consent to a referral of your case to a U.S. Magistrate Judge is entirely voluntary. Unless all parties have consented, no District Court Judge or Magistrate Judge is to be informed of anyone's decision to consent or not to consent. *NO consent form will be accepted for filing unless there is tendered a signed Consent form for EVERY party to the action.* Therefore, in actions involving more than one plaintiff, or more than one defendant, one party must collect all the consents and file them together.

Even though all parties consent to disposition of the case by a Magistrate Judge, this opportunity is subject to the calendar requirements of the Court. Accordingly, it is subject to approval by the District Judge assigned to the case.

Pursuant to Title 28 U.S.C. 636(c)(3) any appeal from a judgment in a case decided by a Magistrate Judge lies directly to the United States Court of Appeals for the Second Circuit.

Procedures relating to these matters are set forth in Local Rule 73 of the Local Rules for the Western District of New York.

MARY C. LOEWENGUTH
CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

,

**CONSENT TO PROCEED
BEFORE A MAGISTRATE
JUDGE**

v.

Plaintiff(s),

,

Defendant(s).

In accordance with the provisions of 28 U.S.C. §636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have Magistrate Judge Jeremiah J. McCarthy conduct any and all further proceedings in the case, including trial, and order the entry of final judgment. Any appeal from the judgment in this case shall be taken to the United States Court of Appeals for the Second Circuit.

Plaintiff(s) : Signature: _____ Date: _____

Print Name: _____

Defendant(s): Signature: _____ Date: _____

Print Name: _____

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to Magistrate Judge Jeremiah J. McCarthy for all further proceedings and the entry of judgment in accordance with 28 U.S.C. §636(c) and foregoing consent of the parties.

Date

United States District Judge

Hon. Jeremiah J. McCarthy
United States Magistrate Judge
Robert H. Jackson United States Courthouse
2 Niagara Square, Buffalo, NY 14202
(716) 551-1880

Courtroom Deputy Clerk: Eric Glynn (716) 551-1881

Law Clerks: Joanna Dickinson (716) 551-1884

Matthew D. Yusick (716) 551-1882

Chambers Procedures

Motions

Unless previously provided with a date by the court, motions shall not contain return dates. Courtesy copies of all motion papers shall be provided to chambers. Oral argument will be scheduled by the court if deemed necessary or requested by one of the parties. If a motion is not decided within 60 days of the time it is fully submitted, the parties are encouraged to bring this to the Court's attention.

Requests for Adjournments or Enlargements of Time

All such requests shall indicate whether the motion is on consent, set forth good cause for the request, and indicate the number of prior adjournments/extensions. If seeking to extend a criminal appearance or deadline, such request shall also address the exclusion of time from the Speedy Trial Act calendar. Parties shall also provide proposed deadlines or dates/times that are mutually agreeable to all parties.

Discovery Disputes

If discovery disputes arise, the parties shall initially advise me of the dispute via letter or e-mail (copying opposing counsel). Upon review of the letter, I will generally schedule a conference with the parties to attempt to resolve the issue informally. If the dispute is not resolved informally, the parties will be given the opportunity to file a formal motion. This informal discovery dispute resolution process is not expedited motion practice. Therefore, informal submissions should provide a brief overview of the issue with supporting documentation and the parties' positions. Parties do not waive arguments by failing to raise them in their informal submissions. However, utilizing this informal discovery process does not act to automatically toll proceedings, including Case Management Order deadlines, discovery deadlines, or scheduled depositions or inspections. For any disputes that require prompt attention, the parties should proceed by motion.

Submissions to Chambers

Judge McCarthy accepts letter submissions via mail or e-mail only, not by fax. Any e-mail submissions should be sent to mccarthy@nywd.uscourts.gov.

Participation by Telephone

In civil matters, parties may generally participate via telephone upon advance notice to chambers unless the proceeding involves taking testimony, requires the exchange of documents, or otherwise ordered by the court. Those electing to participate by telephone shall notify my chambers no later than 24 hours in advance of the conference, failing which it will be assumed that they will be attending in person. In criminal matters, the parties may participate via telephone upon advance approval by the court. When telephonic participation is permitted, the court will arrange a teleconference and provide the parties with the call-in information.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Plaintiff,

CASE MANAGEMENT ORDER

v.

Case No.

Defendant.

Pursuant to the order of Hon. John L. Sinatra, Jr. referring the above case to me for pretrial procedures and the entry of a scheduling order as provided in Fed. R. Civ. P. (“Rule”) 16(b) and Local Rule 16, and a conference with counsel having been held on _____, it is ORDERED that:

1. In accordance with Section 2.1A of the Plan for Alternative Dispute Resolution,¹ this case has been referred to mediation.
2. Motions to opt out of ADR shall be filed by no later than _____.
3. Compliance with the mandatory disclosure requirements found in Rule 26(a)(1) will be accomplished by no later than _____.
4. The parties shall confer and select a Mediator, confirm the Mediator’s availability, ensure that the Mediator does not have a conflict with any of the parties in the case, identify a date and time for the initial mediation session, and file a stipulation confirming their selection on the form provided by the Court by no later than _____. If the parties do not

¹ A copy of the ADR Plan, a list of ADR Neutrals, and related forms and documents can be found at <http://www.nywd.uscourts.gov> or obtained from the Clerk’s Office.

file a stipulation confirming their selection of a mediator by this deadline, the Court will select a mediator in accordance with §5.4(C)(2) of the ADR Plan.

5. All motions to join other parties and to amend the pleadings shall be filed by no later than _____.

6. The initial mediation session shall be held by no later than _____.

7. All fact discovery shall be completed by no later than _____.

If discovery disputes arise, the parties shall initially advise me of the dispute via letter or e-mail (copying opposing counsel). Upon review of the letter, I will generally schedule a conference with the parties to attempt to resolve the issue informally. If the dispute is not resolved informally, the parties will be given the opportunity to file a formal motion. This informal discovery dispute resolution process is not expedited motion practice. Therefore, informal submissions should provide a brief overview of the issue with supporting documentation and the parties' positions. Parties do not waive arguments by failing to raise them in their informal submissions. However, utilizing this informal discovery process does not act to automatically toll proceedings, including Case Management Order deadlines, discovery deadlines, or scheduled depositions or inspections. For any disputes that require prompt attention, the parties should proceed by motion.

8. Each party intending to offer the testimony of an expert in connection with any issue as to which it bears the burden of proof (including claims, counterclaims, cross-claims or affirmative defenses) shall identify such expert(s) and provide reports pursuant to Rule 26 by no later than _____. Each party intending to offer other expert testimony (*i.e.*, testimony in response to expert testimony previously designated by an opposing party, or in support of an issue as to which the offering party does not bear the burden of proof), shall identify such expert(s) and provide reports pursuant to Rule 26 by no later than _____.

9. All expert depositions shall be completed by no later than _____.

10. Pretrial dispositive motions, if any, shall be filed by no later than _____. Such motions shall be made returnable before the Magistrate Judge. The parties are directed to provide a courtesy copy of all motion papers to the Court.

11. If no pretrial dispositive motions are filed, the parties shall contact Judge Sinatra's chambers by _____ to schedule a trial date.

12. Mediation sessions may continue, in accordance with Section 5.12 of the ADR Plan, until _____. The continuation of mediation sessions shall not delay or defer other dates set forth in this Case Management Order.

No extension of the above deadlines will be granted except upon a motion, filed prior to the deadline, showing good cause for the extension. Absent truly exceptional circumstances, any motion for an extension shall be made at least one week prior to the deadline sought to be extended. The parties are reminded that “a finding of ‘good cause’ depends on the diligence of the moving party”. Parker v. Columbia Pictures Industries, 204 F.3d 326, 340 (2d Cir. 2000).

SO ORDERED.

Dated:

JEREMIAH J. MCCARTHY
United States Magistrate Judge